

**I SUMMARY OF INCIDENT:**

On April 30, 2013, at approximately 9:13 p.m., Chicago Police Officers A and B, working Beat #XXX, were on high patrol in the area of XXX S. Burley Avenue due to a previous incident involving the death of an alleged drug dealer a week before. Officers A and B observed a large crowd gathered in the parking lot at XXX S. Burley Avenue. The officers entered the parking lot in their unmarked police vehicle. The officers observed a man, now identified as Subject 1, holding a clear cup containing a clear liquid and bending down between parked vehicles in the parking lot. Officer B, the driver of the unmarked police vehicle, called Subject 1 over to his vehicle to question him. Subject 1 began to approach the officers' vehicle, but then fled on foot. Officer A exited the unmarked vehicle, announced his office, and ordered Subject 1 to stop.

Subject 1 continued to run and allegedly started to fumble with his waistband. Subject 1 then turned back towards the direction of Officer A allegedly holding a shiny, chrome object in his right hand. Officer A discharged his firearm three times at Subject 1. Subject 1 continued to flee from Officer A and ran southbound behind an apartment building at XXX S. Brandon Avenue. Officer A pursued Subject 1 and again ordered Subject 1 to stop, and Subject 1 again turned in the direction of Officer A while still holding the shiny, chrome object in his hand. Officer A then discharged his firearm twice at Subject 1. Subject 1 continued to run in a southerly direction into another parking lot with Officer A in pursuit.

Meanwhile, Officer B drove the unmarked vehicle parallel in front of the building at XXX S. Brandon Avenue in an attempt to cut off Subject 1. Officer B stopped the unmarked vehicle in the parking lot at approximately XXX S. Burley Avenue and opened his driver's side door. At that time, Officer B exited the unmarked vehicle, withdrew his firearm, and took protective cover behind the driver's side door. Subject 1 ran towards the direction of Officer B. As Subject 1 ran southeast towards Officer B, Subject 1 turned his head and body to his right side while his right arm went up simultaneously. Subject 1 right arm and elbow started to extend and. Officer B discharged his firearm five times at Subject 1.

Subject 1 fell to the pavement in a parking lot. Officers A and B approached Subject 1, and Officer B performed a quick pat down on Subject 1. Shortly afterwards, a large crowd gathered and surrounded the officers and Subject 1. Officers A and B radioed for assistance and subsequently other officers arrived on the scene. No weapon or chrome object was recovered on Subject 1 or on the scene. A Samsung cellphone was recovered with Subject 1's personal belongings at Mt. Sinai Hospital.

**II. ALLEGATIONS:**

It is alleged that on April 30, 2013, at approximately 9:13 p.m., at XXX S. Burley Avenue, **Accused Chicago Police Officer A, #XXX, Unit 004:**

1. Disobeyed the Chicago Police Department's Use of Force policy by using deadly force, firing his gun, against Subject 1 without justification, in violation of Rule 6, and;
2. Was inattentive to duty by failing to thoroughly search Subject 1 and recover a chrome object during his arrest, in violation of Rule 10.

It is alleged that on April 30, 2013, at approximately 9:13 p.m. hours, at XXX S. Burley, **Accused Chicago Police Officer B, #XXX, Unit 004:**

1. Disobeyed the Chicago Police Department's Use of Force policy by using deadly force, firing his gun, against Subject 1 without justification, in violation of Rule 6, and
2. Was inattentive to duty by failing to thoroughly search Subject 1 during his arrest, in violation of Rule 10.

### **III. INVESTIGATION:**

#### **A. Interviews**

1. Interview of Subject 1:

In a statement with IPRA dated May 1, 2013, **Subject 1** stated on the date of the incident he was in the parking lot of the XXX barbequing with some friends. Subject 1 admitted he was drinking and smoking cannabis while barbequing. As Subject 1 barbequed, the police pulled up. Subject 1 had two bags of "weed"<sup>1</sup> on him, so he threw it down and took off running. According to Subject 1, "everybody" started to run when the police arrived. As Subject 1 ran, a black male officer, now known as Officer A, pursued Subject 1 while the "Spanish" officer, now known as Officer B, "hopped" in a police vehicle. Officer A, while running, discharged his firearm about four to five times at Subject 1. Subject 1 continued to run and eventually passed Officer B who was parked in a parking lot by the end of some row houses. Subject 1 believed that Officer B was attempting to "cut him off" by the row homes.

When Subject 1 passed Officer B, Officer B discharged his firearm approximately four times at Subject 1, striking Subject 1. Subject 1 believed Officer B was the officer who shot him. After Subject 1 was shot, Officer A and Officer B approached Subject 1 and asked him where the gun was, and Subject 1 replied, "I don't got no gun!" The officers asked Subject 1 why he ran and he told the officers because he was scared.<sup>2</sup> A crowd started to approach and was "riled up." Subject 1 stated he sustained a through-and-through gunshot wound to his left thigh and left arm. Subject 1 denied being in possession of a gun during the incident. (Att. 70)

2. Civilian Witnesses Interviews:

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<sup>1</sup> A street terminology for cannabis.

<sup>2</sup> Subject 1 explained he ran because he was on supervision for selling "weed."

A **Canvass** conducted May 1, 2013, in the vicinity of incident produced two witnesses, Civilian 2 and Civilian 3. (Att.34)

In a statement with IPRA dated May 2, 2013, **Witness Civilian 3** stated on the date and time of the incident she was on her phone and looking out of her window when she heard several gunshots. Civilian 3 did not know where the gunshots were coming from, but observed a "detective car"<sup>3</sup> driving by. Civilian 3 went outside and stood in front of her residence. Civilian 3 then observed Officer B, in a "detective car" tell "Subject 1"<sup>4</sup> (Subject 1) to stop. Subject 1, who was in an all-black Chevrolet Tahoe, complied and stopped. Civilian 3 could not observe what, if anything, Subject 1 was doing. Officer B then discharged his firearm three to five times at Subject 1. Shortly afterwards, Civilian 3 observed Subject 1 on the ground. Civilian 3 did not know if Subject 1 exited his vehicle on his own or if he was pulled from his vehicle. (Att. 29)

In a statement with IPRA dated May 2, 2013, **Witness Civilian 2** stated on the date and time of the incident she looked out of her window and observed two police vehicles, a gray unmarked police vehicle and a marked police vehicle, and a crowd running. At that time, Officer B jumped out a gray unmarked police vehicle and started to shoot southbound in a parking lot. Civilian 2 could not tell what Officer B was shooting at, but she knows there was a crowd of people outside. Civilian 2 recalled that Officer B fired his weapon more than five times. Civilian 2 went outside and stood in front of her doorway and observed Subject 1 on the ground. The police had surrounded Subject 1 and no one was getting past because the officers had their guns drawn. (Att. 71)

Several attempts to contact and interview witnesses Civilian 4, Civilian 5, and Civilian 6, via telephone calls, letters, and personal visits were met with negative results. (Att. 5, 17, 54, 55, 56, 72, 75, 78, 79, 80, 84, 85, 105, 106, 107, 108, 109, 110, 123)

In a telephone conversation with IPRA dated May 3, 2013, **Witness Civilian 7** stated she did not witness the officer involved shooting. Civilian 7 explained she arrived at the scene after the shooting had occurred and was subsequently arrested. (Att. 47)

### 3. Witness Officer Interviews:

In a statement with IPRA dated May 1, 2013, **Witness Police Sergeant 3** stated on the date of the incident she was in an unmarked vehicle. She and her team went to the XXX in a "wolf pack" due to a homicide that had occurred a week prior in the vicinity of the location of the incident. Sergeant 3 explained "wolf pack" meant officers working together in numbers to show a bigger presence. Sergeant 3 recalled there was an increase in the temperature and believed there would be some activity going on in that area.

Upon arrival, Sergeant 3 observed a large crowd in the area. Officers A and B drove into a parking lot while Sergeant 3 remained on Burley Avenue. Shortly afterwards, Sergeant 3

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<sup>3</sup> Civilian 3 described the "detective car" as an unmarked vehicle.

<sup>4</sup> Civilian also stated Subject 1's nickname is "XXX"

observed Officers A and B engage an individual, Subject 1, and asked him to come to their vehicle. Officer A got out of the vehicle he was in and started to approach Subject 1. Subject 1 reached for something between two cars.<sup>5</sup> Subject 1 stood up and proceeded to go for his waistband, as if to pull something out of his waistband or put something in his waistband. Officer A yelled, “Let me see your hands,” and Subject 1 took off running, holding his pants and a cup in his hand. Officer A pursued Subject 1 while Officer B, who never exited his unmarked vehicle, put his vehicle into drive and started to follow Officer A. Sergeant 3 got back into her vehicle and proceeded to enter into the parking lot, losing sight of Subject 1 and Officers A and B.

As Sergeant 3 entered the parking lot, she heard three gunshots. Sergeant 3 then heard “several more gunshots.” Sergeant 3 proceeded to drive to Brandon Avenue and observed Subject 1 on the ground. Officers A and B were attempting to handcuff Subject 1, but Subject 1 was telling the officers that he could not move his arm. Officer B then handcuffed one of Subject 1’s arms to his pants. The crowd, which consisted of approximately 150 people, started to approach where the officers were standing and Sergeant 3 and Officers 4 and 5 attempted to keep the crowd back. Some people from the crowd, including Subject 1’s brother, now known as Civilian 5, were able to get close to Subject 1. Sergeant 3 did not observe Officers A and B discharge their firearms. (Att. 57)

In a statement with IPRA dated May 1, 2013, **Witness Police Officer 4** stated on the date of the incident he was working with Officer 5 in a marked vehicle. Upon arrival to XXX S. Burley Avenue, Officer 4 observed two large groups of people, some drinking, on each side of XXX S. Burley Avenue. A gang member was killed and there was a “repass”<sup>6</sup> for the gang member at the location of incident. Officers A and B drove their unmarked vehicle into the parking lot. Officer 4 observed an individual, Subject 1, start to walk away from the crowd as he and Officer 5 stopped their vehicle outside of the parking lot on Burley Avenue. Officer A then exited his vehicle, announced his office, and told Subject 1 to “come here.” Subject 1 stopped, turned around, and made some type of movement underneath a parked vehicle. Officer 4 did not know if Subject 1 had dropped something or picked something up. Subject 1 stood up, turned around, and took off running while clutching his waistband.

Officer A yelled at Subject 1, “Police! Stop!” several times as he pursued Subject 1 on foot. Officer 4 then lost sight of Officer A and Subject 1. Moments later, Officer 4 heard a series of gunshots, approximately two or three. Officer 4, who had been standing outside of his marked vehicle, got back into the marked vehicle with Officer 5 and heard additional gunshots.<sup>7</sup> Officer 5 started to drive down the same path Officer A traveled. Officers 4 and 5 came upon Officer B’s vehicle. Officer 5 parked their marked vehicle. Officers 4 and 5 exited their vehicle and observed Officers B and A handcuffing Subject 1, who was bleeding. A crowd of over 100 people rushed toward the officers and Subject 1. The crowd was belligerent by screaming obscenities and yelling “fuck the police.” Officer 4 withdrew his firearm and told the crowd to “stay back.” Officer 4 then observed three unidentified female subjects approach Subject 1 and hold his hand. Officer 4 did not observe Officer A or Officer B discharge their firearms. (Att. 58)

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<sup>5</sup> Sergeant 3 stated it appeared that Subject 1 was grabbing something or putting something down, but she could not tell what it was. Sergeant 3 was able to observe Subject 1’s actions as she stood in the middle of Burley Avenue.

<sup>6</sup> Repass or repast is a gathering following a funeral service or memorial.

<sup>7</sup> Officer 4 stated Officer 5 never got out of the marked vehicle.

In a statement with IPRA dated May 1, 2013, **Witness Police Officer 5** stated on the date of the incident he was working with Officer 4 in a marked vehicle. Officer 5 went to XXX S. Burley Avenue on a “wolf pack mission”<sup>8</sup> with Officers A and B in one vehicle and Sergeant 3 in another vehicle. The officers went to the location of incident because of the weather and gang and narcotics activity in the area.<sup>9</sup>

Upon arrival to XXX S. Burley Avenue, Officer 5 observed a large group of people drinking on the public way. Officers A and B pulled into the parking lot while Officers 5 and 4 remained outside of the parking lot. As Officer 5 sat in his marked vehicle, he observed a male subject, Subject 1, start to walk away from the large group of people that were drinking. Officers A and B exited their vehicle, identified themselves, and told Subject 1 to “come here.” Subject 1 walked away, went in between two parked cars, and crouched down. Subject 1 stood back up and took off running while holding onto his stomach area. Officer A pursued Subject 1 while Officer B got back into his vehicle. Officer 5 lost sight of Subject 1 and Officers A and B.

Officer 4 got back into the marked vehicle and Officer 5 heard two or three gunshots. Seconds later, Officer 5 heard additional gunshots. Officer 5 drove inside the parking lot and followed the same path as Officers A and B until Officer 5 observed Officer B’s vehicle stopped. Officer 5 stopped his marked vehicle and exited. Officers A and B were attempting to place Subject 1 into custody. Officer 5 turned around and observed a huge crowd of more than 200 people approaching. The crowd started to surround the officers and Subject 1. Sergeant 3 arrived and called a “10-1.”<sup>10</sup> Meanwhile, people in the crowd attempted to take Subject 1 away. Officer 5 scanned the crowd for threats, withdrew his firearm, and placed the firearm in the “down ready position” because he heard someone in the crowd state “we kill people for fun.” Officer 5 did not observe Officer A or Officer B discharge their firearms. (Att. 62)

In a statement with IPRA dated April 21, 2015, **Witness Detective 6** stated on the date of the incident he responded to an officer involved shooting as the lead detective. Upon arrival to the scene, Detective 6 was informed officers from the 4th District were riding in a group. The officers were in the area because two or three weeks earlier there was a homicide and the repass was on the date of the incident. When the officers arrived at the location of incident, they observed people drinking on the public way and a man, Subject 1, ducked by a car. Officers announced their office and attempted to stop Subject 1, but Subject 1 took off running. Officers Officer A pursued Subject 1 on foot and observed Subject 1 remove a chrome shiny object from his waistband and turned towards Officer A. Officer A then discharged his firearm. Detective 6 believed Officer A discharged his firearm three separate times and Officer B discharged his firearm during the incident as well.

Detective 6 conducted a walkthrough with Officers A and B. The chrome object was never recovered and no weapon was ever recovered. Officer A believed the chrome object

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<sup>8</sup> Officer 5 explained a “wolf pack mission” consists of two or more police cars traveling in a caravan.

<sup>9</sup> Officer 5 stated it was 80 degrees and hot, and due to all the violence, the officers went to that area. In addition, a couple of weeks prior to the incident, a drug dealer was murdered inside the complex, XXX, and people were outside on the date of the incident because there was a repass for the drug dealer.

<sup>10</sup> Radio code for “officer needs assistance.”

Subject 1 had was a firearm, but Detective 6 and Officer A could not definitively say what the chrome object. Officer A could not state the chrome object was a firearm. Officer B did not observe Subject 1 with a chrome object. While Detective 6 was on the scene of the incident, Sergeant 7 , #XXX,<sup>11</sup> was at Stroger Hospital attempting to interview Subject 1. At Stroger Hospital, Sergeant 7 looked through Subject 1's personal effects and observed a plastic biohazard bag containing a bloody silver cell phone.

Sergeant 7 called Detective 6 and told him about the cell phone and Detective 6 requested the cell phone be brought back to Chicago Police Department Area South Detective Division, located at 727 E. 111<sup>th</sup> Street. Detective 6 wanted the cell phone to be brought back to Area South because it was a silver/chrome object and he did not want the cell phone to disappear because "stuff is known to disappear in the hospital." Subsequently, Detective 6 obtained possession of the cell phone and gave the cell phone to Forensic Investigator 8, #XXX, while at the detective division. Forensic Investigator 8 inventoried the cell phone. Forensic Investigator 8 and Detective 6 then relocated to Stroger Hospital to inventory the rest of Subject 1's property. Detective 6 does not know how or who placed the cell phone in a plastic biohazard bag, but assumed it was either hospital personnel or paramedics. (Att.93)

#### 4. Accused Officer Interviews:

In a statement with IPRA dated December 29, 2015, **Accused Officer A** stated he and Officer B were on patrol in an unmarked vehicle.<sup>12</sup> Officer B was the driver of the unmarked vehicle and Officer A was the front passenger. On the date of the incident, Officer A went to the XXX, also called XXX, to show police presence because there was a repass for a known gang member who had been killed in that area recently. Sergeant 3 relayed the message that approximately over 100 to 150 people were at the repass and the people were drinking, smoking, and being loud. Sergeant 3 wanted to make sure there was a show of police presence. Officer A explained that the location of incident is a "high crime, high gang, and high narcotics area and the majority of people in that area are known to walk around carrying guns."

After being informed of the repass, Officers A and B drove to the area of the location of incident. Officers A and B were in one vehicle, Officers 5 and 4 were in a second vehicle, and Sergeant 3 was in a third vehicle. Upon arrival to the location of incident, Officers A and B drove into the parking lot and one of the officers in the second vehicle, Officer 5 or Officer 4, radioed via car-to-car to stop the individual, Subject 1, who was holding a cup. Subject 1 was the only guy holding a cup in front of Officer A' unmarked vehicle. Officers 5 and 4, who were positioned northbound on Burley Avenue, had a direct line of sight of Subject 1.

As Officer A and Officer B were almost halfway in the parking lot, Subject 1 looked in the direction of Officers A and B.<sup>13</sup> Subject 1 turned his head away quickly and started to walk in the opposite direction, which was to the east of Officers Officer A' and Officer B's vehicle. Subject 1 proceeded to bend down between two parked cars, and then he kneeled down and

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<sup>11</sup> At the time of the incident, Sergeant 7 was a detective.

<sup>12</sup> Officer A stated Officer B was his usual partner.

<sup>13</sup> According to Officer A, Subject 1 appeared to look around frantically as though he was trying to make a quick exit, which Officer A interpreted as attempting to avoid coming into contact with Officers A and B.

started to mess with his waistband area “as if he was trying to conceal something, put something away, or cover something up, such as gun or a weapon.”<sup>14</sup>

Subject 1 stood up and turned around towards Officers A and B. Officers A and B simultaneously got out of their unmarked vehicle. Officer B stated to Subject 1, “Chicago Police, stop. I want to talk to you. Come over here.” Subject 1 looked in Officer B’s direction and took a step or two towards the officers’ unmarked vehicle. Subject 1 then threw his cup down and started to run away. Officer A announced his office by stating, “Chicago Police, stop,” but Subject 1 continued to run. As Subject 1 ran, he grabbed his waistband area. Officer A pursued Subject 1 through the complex and continued to tell Subject 1 to stop, but Subject 1 did not listen and ignored all verbal commands.

Subject 1 then turned his torso to the right, while running, and looked at Officer A over his right shoulder. Subject 1 simultaneously raised his right hand at a ninety degree angle while pointing a chrome shiny object, which Officer A believed to be a weapon. Officer A could not make out specifically what Subject 1 was holding because it was dark artificial lighting in the area. Officer A, in fear of his life, slowed down from running but did not stop running, removed his firearm from the holster, and discharged his firearm three times at Subject 1. Officer A was approximately over twenty-five feet away from Subject 1 when he fired his firearm. Subject 1 stumbled to the ground but continued to run. Officer A continued to pursue Subject 1 while re-holstering his firearm and stating, “Chicago Police, stop.”

Subject 1 ran behind some row homes and Officer A lost sight of Subject 1. Officer A performed a police technique called “slicing the pie”<sup>15</sup> before he continued to run behind the row homes. After Officer A cleared the building, he observed Subject 1 approximately fifty feet away from him running. Subject 1 turned again, while running, with his torso to the right. Subject 1 raised his right hand at a ninety degree angle while pointing a chrome shiny object at Officer A. Officer A then slowed down running, removed his firearm from the holster, and discharged his firearm twice. Subject 1 stumbled again, but continued to run, and Officer A re-holstered his firearm. Officer A then heard Officer B announce his office stating, “Chicago Police, stop,” and Subject 1 turned, looking over his right shoulder, with his right arm bent nearly parallel with his right shoulder.<sup>16</sup> As Officer A slowed down running and started to remove his firearm from the holster, he heard more gunshots.<sup>17</sup> Subsequently, Subject 1 stumbled and fell to the ground.

Officer A emerged from behind the row homes, approached Subject 1, and stated, “Let me see your hands. Let me see your hands.” Officer A then observed blood on the ground and blood on Subject 1. Subject 1 raised his right arm in the air. As Officer A approached Subject 1, he observed that Subject 1 was bleeding and injured in his left side area. Officer B grabbed Subject 1’s right wrist area and handcuffed the wrist to Subject 1’s jean loop area. Officer B

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<sup>14</sup> Upon inquiry, Officer A stated Subject 1’s actions between the parked vehicles were also consistent with someone attempting to conceal narcotics as well.

<sup>15</sup> A training technique that refers to how an officer should walk around a corner or building in a dangerous situation. “Slicing the pie” provides a safe method to round corners with the least exposure to the unknown situation around that corner. Officer A described the technique as taking small “choppy” steps around something at a good distance to see because the angle and distance will give you a visual of something further down without actually exposing yourself entirely.

<sup>16</sup> Officer A specifically recalled Subject 1’s right arm was coming up from his waistband area.

<sup>17</sup> Officer A could not recall how many gunshots he heard.

performed a quick protective pat down of Subject 1's waistband area, which was the front, back, and side to side, but no objects were recovered on Subject 1. Officers A and B did a quick scan of Subject 1's area. A thorough search was not performed on Subject 1 or in the immediate area because a crowd of approximately 200 people ran towards Officers A and B. The people were "irate, combative, and had their fists clenched." Officers A and B attempted to keep the crowd back, but Officer A observed five to seven unidentified individuals surround Subject 1.

The individuals were attempting to pick up Subject 1 and carry him away from the scene, so Officer A told the individuals to leave Subject 1 alone because an ambulance was on its way. A short time later, Sergeant 3 and Officers 4 and 5 arrived and then other officers arrived on the scene to help control the crowd. An ambulance arrived on the scene and transported Subject 1 to the hospital.

Officer A did not know if Subject 1 was ever searched again after the quick protective pat down because he did not attempt to search Subject 1 again, and he did not ask anyone to search Subject 1. A gun was not recovered on the scene. Officer A was later told by detectives that a shiny chrome cell phone was recovered with blood they believed belonged to Subject 1 on it. Officer A could not provide details as to where the cell phone was recovered at.

Officer A denied disobeying the Chicago Police Department's Use of Deadly Force by firing his firearm at Subject 1 without justification. Officer A explained that "Subject 1 placed him in a reasonable position to believe that he (Subject 1) was a threatening manner." Subject 1 was holding an object that was chrome and shiny which was consistent with someone with a gun. Officer A stated he was not aware of any calls of a man with a gun prior to him coming into contact with Subject 1. Officer A stated there was a possibility that individuals took the chrome object from Subject 1 because it was hard to maintain a direct line of sight to Subject 1 due to the crowd of people. Officer A stated that he did not observe anyone remove anything from Subject 1 or the scene. (Att. 121)

In a second statement with IPRA dated April 15, 2016, **Accused Officer A** stated when he first arrived at the XXX he did observe other people with cups in their hand and believed they were drinking alcohol. However, Subject 1 was stopped because he looked in the officers' direction as though he was trying to get away from the police. Subject 1 was also the only one who broke away and walked away from the crowd. Officer A stated he did not observe Officer B discharge his firearm during the incident.

Officer A denied he was inattentive to duty by failing to thoroughly search Subject 1 or recover the chrome object that Subject 1 had in his possession. Officer A stated he did not and was never able to thoroughly search Subject 1. Officer A stated he could have told Sergeant 3 that Subject 1 was never searched so she could ensure another officer searched Subject 1. Officer A explained that, with the totality of everything that was going on at the scene, there was no time to do any kind of searching of Subject 1. Officer A stated he never ensured Subject 1 was properly searched by him or another Department member after the crowd was controlled because "there was so much going on and it was a stressful situation." Officer A stated after paramedics and additional officers were on the scene, and no other individuals were around Subject 1, it was a possibility Subject 1 could have been searched. Officer A did not know if Subject 1 was ever

searched properly or thoroughly searched once he was placed into custody, other than the quick protective pat down performed by Officer B. (Att. 126)



*Diagram provided by Officer A which details his direction of travel*

In a statement with IPRA dated January 6, 2016, **Accused Officer B** stated on the date of the incident he and Officer A went to the location of incident, XXX, also nicknamed the XXX, because there was a homicide earlier that week and the repass was that day. Sergeant 3 became aware of the repass and wanted to show a member presence because of possible gang activity. The repass was for a gentleman with gang ties. Officers B and A went to the location of incident, along with Sergeant 3 and Officers 4 and 5, in a “wolf pack.”<sup>18</sup>

Upon arrival at the XXX, Officer B observed numerous people at the location of incident on the outside of the XXX, which is surrounded by a black wrought iron gate, as well as in the parking lot of the XXX. Officer B drove into the XXX parking lot, while Sergeant 3 and Officers 4 and 5 stayed parked on Burley Street. After entering the parking lot, Officer B received notification, via car-to-car radio, from Officer 4 that an individual, Subject 1, in the parking lot was acting suspiciously by keeping an eye on the officers. Officer 4 told Officers B and A to keep an eye on Subject 1 and to stop Subject 1 if they got a chance. Officer 4 provided a description of Subject 1, but Officer B could not recall the description.

Officer B observed Subject 1 with a plastic cup in his hand at which time Subject 1 broke away from the crowd he was in, which consisted of 10 to 15 people. Subject 1 proceeded to go in between two vehicles and ducked down between the vehicles at which time Officer B lost sight of Subject 1 for about a second. Officer B stated he believed that Subject 1 was “attempting to discard or conceal something, such as a weapon or drugs, or Subject 1 could have just been tying his shoe.” The reason for stopping Subject 1 was because a homicide had occurred a week ago; it was a gang member’s repass; there was cannabis in the air and he did not know if Subject 1 was contributing to the smoke in the air; and Subject 1 had a possible alcoholic drink which is not permitted on state-supported land.

Subject 1 reappeared and Officer B exited the unmarked vehicle and attempted to conduct a field interview. Officer B stepped out of his vehicle and ordered Subject 1 to “come over here and put his hands on the vehicle.” Officer B firearm was still in his holster because he had no reason to withdraw his firearm at that time. Subject 1 initially complied, by taking a step or two towards Officers B and A, but then immediately dropped his plastic cup and ran into the complex of the XXX while grabbing his waist with his right hand. Officer B recalled that Subject 1 was wearing jeans and the jeans did not seem to be baggy or slouching. Officer B believed that Subject 1 grabbed his waist for one of two reasons, either because he was holding his pants or because he was holding a weapon. Officer B also stated it could have meant Subject 1 was concealing drugs.

Officer A pursued Subject 1 down the walkway on foot while Officer B got back into his vehicle to follow. Officer B attempted to drive onto the parkway but encountered difficulty because vehicles were parked illegally in the handicap spots. After a couple of seconds, Officer

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<sup>18</sup> Officer B described the “wolf pack” as officers patrolling together with one or more vehicles just as wolves like to stay together in packs.

B was able to narrowly fit his unmarked vehicle between the illegally parked vehicles. Officer B lost sight of Subject 1, but could observe Officer A once he drove onto the walkway. Officer B then heard two or three gunshots, but did not observe who was firing a gun. Officer B did not see and could not tell that Officer A discharged his firearm.

Moments later, Officer B observed Subject 1 run behind a set of row homes. Officer B proceeded to drive through a parking lot parallel with the row homes. As Officer B drove through the parking lot, he heard two more gunshots. Officer B stopped the unmarked vehicle and positioned it at the end of the row homes, in an attempt to cut off Subject 1. Officer B exited the unmarked vehicle, barricaded himself behind the driver's side door and withdrew his firearm.

Subject 1 exited from behind the row homes, and Officer B identified himself and stated, "Get on the ground. Drop the gun!" Officer B stated that he believed Subject 1 was shooting at Officer A because of the gunshots he heard. Officer B ordered Subject 1 to get on the ground several times, but Subject 1 did not comply and continued to run. As Subject 1 approached a tree, Subject 1 turned his head and body to his right side while his right arm went up simultaneously. Officer B observed Subject 1's right arm and elbow start to extend and interpreted this to mean that Subject 1 was possibly lifting a weapon. Officer B stated that after observing Subject 1 ignore his verbal commands, observing Subject 1 grab his waist, and hearing gunshots, he believed that Subject 1 had a gun and was going to shoot Officer A. Officer B, in fear for Officer A's safety, discharged his firearm five times at Subject 1. Officer B did not have a chance to observe anything in Subject 1's hand prior to discharging his weapon. Officer B described the lighting condition as artificial light, but dark. Subject 1 continued to run a little distance and then fell in a parking lot.

Officer B approached Subject 1 as Subject 1 laid on his back with his head up. Officer B stated to Subject 1, "Let me see your hands." Subject 1 stated, "I can't lift my hand," and Officer B observed that Subject 1's left arm was injured. Officer B made a "quick move" and observed blood and Subject 1's left hand opened. Officer B stated Subject 1 could not move his left arm. Officer B re-holstered his firearm, kneeled down by Subject 1, and performed quick handcuffing by handcuffing Subject 1's right arm to his jeans belt loop. Officer B also performed a quick swipe of Subject 1's waist, which did not reveal anything. As Officer B handcuffed Subject 1, Officer A approached the scene. After Officer A approached, Officer A alerted Officer B that a crowd was approaching the scene.

At that time, a crowd of people, approximately 50 to 100 people, approached Officers B and A. Approximately five to six females approached Subject 1 and attempted to comfort him while other individuals attempted to pull Subject 1 away from the scene. Officer B had to physically pull Subject 1 back so that Subject 1 would not be removed from the scene. Some people were being aggressive towards Officer B and Officer A by yelling and directing profanities. Sergeant 3 and Officers 4 and 5 arrived on the scene and then other officers responded.

Officer B stated, to the best of his knowledge, that Subject 1 was not searched again after the crowd was controlled, and no weapon was ever recovered. According to Officer B, Officer A

never told him that Subject 1 had an object or weapon and Officer B did not see any objects on the ground near Subject 1. Officer B did not observe anyone take anything away from the scene.

Officer B did not observe Officer A discharge his firearm. Officer B recalled he became aware of Subject 1 having a chrome object while being questioned by detectives, but he never saw Subject 1 with a chrome object. Officer B denied disobeying the Chicago Police Department's Use of Deadly Force by firing his weapon at Subject 1 without justification. Officer B explained he fired his weapon because he was in fear that Subject 1 was going to fire a gun at Officer A. (Att. 122)

In a second statement with IPRA dated April 15, 2016, **Accused Officer B** stated he could have alerted other officers that Subject 1 was not properly or thoroughly searched, but he ~~did not because he did not have a chance to talk to anyone. Officer B denied failing to properly~~



D

A handwritten signature in blue ink, appearing to read "J. B. 16093".

*Diagram provided by Officer B which details his direction of travel*

## B. Department Reports

**The IPRA Preliminary Report and the Major Incident Notification Report** provided an account of the incident similar to the introduction of this report. (Att.4, 88)

The **Arrest Report** for Subject 1 documented that he was arrested on April 30, 2013, at 2115 hours at XXX S. Brandon and charged with two counts of Aggravated Assault to a Peace Officer. The arresting officers were Officers A and B and Officer 9 was the attesting officer. It was reported that the XXX tactical team were “wolf packing” in the vicinity of 88th and Burley Avenue for violence suppression due to the recent homicide of Civilian 8. At said time, Beat #XXX, Officers A and B, observed a large crowd at the location of XXX S. Burley. Officers attempted to conduct a field interview with Subject 1, who was observed drinking what appeared to be an alcoholic beverage. Upon approach, Subject 1 made furtive movements under a parked vehicle and toward his waistband which officers believed to be him concealing a weapon. Officers A and B ordered Subject 1 to produce his hands and stop at which time he fled, grasping at his waist with his right hand. Officer A gave chase on foot while Officer B followed in his vehicle. Officer A observed Subject 1 produce a chrome object from his waistband, which he believed to be a handgun, and in fear of his life and his partner’s life, discharged his weapon, striking Subject 1. Officer B heard the shots and observed Subject 1 make furtive movements toward Officer A. Officer B, in fear of his partner’s life and his life, also discharged his weapon. Subject 1 was placed in custody and an ambulance was summoned to the scene. (Att. 7)

A **Chicago Police Department Rap Sheet** for Subject 1 documented that prior to the date of the incident, Subject 1 was arrested for Cannabis- Possession 10-30 grams on 15 January 2013<sup>19</sup> and 26 August 2012,<sup>20</sup> and Cannabis- Possession 2.5 - 10 grams on 04 September 2008<sup>21</sup> and 16 February 1998.<sup>22</sup> Subject 1’s rap sheet did not include any felony arrests or any arrests involving police officers prior to this incident. (Att. 170)

According to Officer A’s **Tactical Response Report (TRR)**, completed by Officer A, Subject 1 did not follow verbal direction, fled, and used force likely to cause death or great bodily harm. Officer A responded with member presence, verbal commands, take down/emergency handcuffing, and the discharge of his firearm, a Glock 9mm model 17, which was fired five times. (Att. 9)

According to Officer A’s **Officer’s Battery Report (OBR)**, on the date, time, and location of the incident, Officer A was on-duty when he came into contact with Subject 1. Subject 1 was in possession of an unknown firearm. Officer A did not sustain any injuries. (Att. 10)

According to Officer B’s **TRR**, completed by Officer B, Subject 1 did not follow verbal direction, fled, and used force likely to cause death or great bodily harm. Officer B responded

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<sup>19</sup> This case was stricken from docket with leave to reinstate, which means the state’s attorney decided to dismiss the case while reserving the right to reinstate charges at a later time.

<sup>20</sup> This case was nolle prosequi, which means the state’s attorney decided to no longer prosecute.

<sup>21</sup> This case was stricken from docket with leave to reinstate.

<sup>22</sup> This case was stricken from docket with leave to reinstate.

with member presence, verbal commands, take down/emergency handcuffing, and the discharge of his firearm, a Sig-Sauer 9mm model 226, which was fired five times. (Att. 11)

According to Officer B's **OBR**, on the date, time, and location of the incident, Officer B was on-duty when he came into contact with Subject 1. Subject 1 was in possession of an unknown firearm. Officer B did not sustain any injuries. (Att. 12)

**The Case Supplementary Report**, RD #XXX, completed by Detective 6 and Detective 10, #XXX, documented that a search of the area was conducted but a firearm was not recovered. Detectives noted there was an extremely large and unruly crowd of approximately 100 people who had contaminated the entire crime scene prior to the search. In addition, video surveillance at the location of incident did not capture the incident because only live footage can be viewed.<sup>23</sup> Sergeant 7 ,<sup>24</sup> #XXX, spoke to Subject 1 who stated that he was at a barbecue with approximately 40 to 50 people. Subject 1 was drinking and smoking cannabis when he observed the police pull up. Subject 1 explained he did not want to get stopped, so he fled from the police and was subsequently shot by the police. Subject 1 denied having a handgun. Detectives 6 and 10 conducted a follow-up interview with Subject 1 and Subject 1 provided the same information he gave to Sergeant 7 and continued to deny he was in possession of a handgun. Subject 1 added he ran because he was in possession of cannabis. (Att. 81)

**The Case Supplementary documented that detectives spoke with Officer A.** The account differs from Officer A's IPRA statements because it stated that Officer A told Detective 6 that he discharged on his firearm on three separate occasions. Officer A stated that as Subject 1 ran he was holding his waist with his right hand. Subject 1 started to raise his arm from the waist, removed a chrome object from his waist, and turned back to his right. Officer A believed Subject 1 was in possession of a handgun and discharged his firearm three times. Subject 1 continued to run. Subject 1 turned to his right with his right arm outstretched towards Officer A. Officer A then discharged his weapon again once. Subject 1 continued to run and Officer A heard Officer B yell, "Stop! Police!" Subject 1 turned to his right, extended his arm back towards Officer A, and Officer A discharged his weapon again once. Officer A then heard several more gunshots and emerged from some row homes, located at XXX S. Burley Avenue. Officer B approached Subject 1 and conducted a quick pat down of Subject 1's waist area and handcuffed his right hand. (Att. 81)

**The Case Supplementary documented that detectives spoke with Officer B.** Officer B provided an account of the incident similar to his statement with IPRA. Officer B added as Subject 1 ran out from behind XXX S. Burley Avenue, he yelled at Subject 1 to "Stop," "Get on the ground," and "Show me your hands." Subject 1 continued to run and raised his right arm behind him. Officer B was unable to observe Subject 1's hand, and in fear of his life and Officer A' life, discharged his firearm once at Subject 1. Subject 1 continued to run and Officer B, in continuous fear of his life, discharged his firearm four more times. Subject 1 fell to the ground. Officer B approached Subject 1 and "quickly swiped Subject 1's beltline" and handcuffed his right hand. (Att. 81)

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<sup>23</sup> Footage is not recorded.

<sup>24</sup> Sergeant 7 was a detective at the time of the incident.

**The Case Supplementary documented that detectives spoke with Sergeant 3.** Sergeant 3 provided an account of the incident similar to her statement with IPRA. One portion of Sergeant 3's statement of the incident was slightly different. Sergeant 3 told detectives she observed Subject 1 duck down by a park car. Officers B and A exited their squad car and announced, "Police, stop," and Subject 1 started to flee.<sup>25</sup> (Att. 81)

**The Case Supplementary documented that detectives spoke with Officer 4.** Officer 4 provided an account of the incident similar to his statement with IPRA. One portion of Officer 4's statement of the incident was slightly different. Officer 4 told detectives he observed Subject 1 duck down by the side of a parked car. Officers B and A exited their squad car and announced, "Police, stop," and Subject 1 started to flee.<sup>26</sup> (Att. 81)

**The Case Supplementary documented detectives spoke with Officer 5.** Officer 5 provided an account of the incident similar to his statement with IPRA. One portion of Officer 5's statement of the incident was slightly different. Officer 5 told detectives he observed Subject 1 squat down by the side of a parked car. Officers B and A exited their squad car and announced, "Police, stop, come here," and Subject 1 started to flee.<sup>27</sup> (Att. 81)

**An Arrest Report** for Civilian 5 and an Original Case Incident Report for Interference with Public Officer – Obstructing Justice, RD #XXX, both completed by Officer 9, #XXX, documented that Civilian 5 was arrested on April 30, 2013, at 2128 hours at XXX S. Brandon Avenue, and charged with Reckless Conduct. The arresting officers were Officer 9 and Officer A1 , #XXX. It was reported Civilian 5 refused to cooperate with officers' repeated orders to move behind the crime scene tape as officers on scene were attempting to get medical attention to the subject, Subject 1, who had just been shot. Civilian 5 kept using profanity and berating officers by stating, "Fuck you, I don't have to move," and "Fuck you," while continuing to incite the crowd that had now become hostile toward officers. Civilian 5 received multiple orders to move back behind the crime scene tape, to which he replied "No." After numerous warnings, Civilian 5 continued to interfere with officers controlling the scene and getting medical personnel to render aid to Subject 1. Civilian 5's actions further incited an already hostile crowd and made it difficult for officers to allow medical personnel into the crime scene. placing officers and Subject 1 in further danger. Subsequently, Civilian 5 was taken into custody. (Att. 38, 39)

**An Arrest Report** for Civilian 9 and an Original Case Incident Report for Interference with Public Officer – Obstructing Justice, RD #XXX, both completed by Officer A2, #XXX, documented that Civilian 9 was arrested on April 30, 2013, at 2321 hours at XXX S. Brandon Avenue, and charged with Resisting a Peace Officer. The arresting officers were Officer A2 and Officer A3, #XXX. It was reported Civilian 9 was observed inside the taped-off crime scene area. Officer A3 ordered Civilian 9 to leave the crime scene and she complied. Civilian 9 was

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<sup>25</sup> Sergeant 3 stated in her statement to IPRA that Subject 1 stood up and proceeded to go for his waistband, as if to pull something out of his waistband or put something in his waistband. Officer A yelled, "Let me see your hands," and Subject 1 took off running, holding his pants and a cup in his hand.

<sup>26</sup> Officer 4 stated in his statement to IPRA that Subject 1 stopped, turned around, and made some type of movement underneath a parked vehicle. Officer 4 did not know if Subject 1 had dropped something or picked something up. Subject 1 stood up, turned around, and took off running while clutching his waistband.

<sup>27</sup> Officer 5 stated in his statement to IPRA that Subject 1 walked away, went in between two parked cars, and crouched down. Subject 1 stood back up and took off running while holding onto his stomach area.

then observed at the listed address, which was also inside the crime scene area. There was a large congregated crowd around the listed crime scene and Civilian 9 was acting with disregard for police authority by screaming, "Just let me go, I didn't do shit. I don't care about all this shit, I just want to go home." Civilian 9 incited the crowd by continuing to be unruly and making it difficult for officers to continue to keep calm. Subsequently, Civilian 9 was taken into custody. (Att. 40, 41)

An **Arrest Report** for Civilian 6 and an Original Case Incident Report for Assault - Aggravated, RD #XXX, both completed by Officer A4, #XXX, documented Civilian 6 was arrested on April 30, 2013 at 2125 hours, at XXX S. Burley Avenue, and charged with Aggravated Assault, Reckless Conduct, and Obstructing an Officer. The arresting officers were Officer A4 and Office 15, #XXX. It was reported that Civilian 6 engaged police officers on scene in an aggressive manner while at XXX S. Burley Avenue. While police officers were securing a crime scene, Civilian 6 ignored several verbal commands from Sergeant 16, #XXX, to disperse from the crime scene. Civilian 6 approached Sergeant 16 in an aggressive manner, in a bladed stance with clenched fists, while cursing. Sergeant 16, fearing he was about to be the victim of a battery, deployed O.C. spray, spraying Civilian 6 in the face and head area. Civilian 6 turned and started to flee. Officer A5 gave chase and performed an emergency takedown and handcuffing. Civilian 6 was subsequently transported to the 4th District where he received water to flush out the O.C. spray from his face. After being read his Miranda rights, Civilian 6 apologized for being aggressive and stated his "play cousin,"<sup>28</sup> was shot and he was very upset. Sergeant 16 and Officer A5 both completed TRRs, and Sergeant 16 completed an OBR, pertaining to Civilian 6's arrest. (Att. 42, 43, 44, 45, 46)

A **Breathalyzer Test** for Officer A taken on May 1, 2013, at 3:55 a.m., revealed his BAC was .000. Officer A also submitted to a drug test on the same date, at 4:15 a.m., which revealed negative results. A breathalyzer test for Officer B taken on May 1 2013, at 3:17 a.m., revealed his BAC was .000. Officer B also submitted to a drug test on the same date, at 2:55 a.m., which revealed negative results. (Att. 150)

**POD** #75, located at XXX S. Burley Avenue, failed to capture the incident because the POD did not display any clear images. (Att. 31, 32, 33)

### C. Medical Information

The **Chicago Fire Department Ambulance Reports** documented that paramedics found Subject 1 in a parking lot on his back. Subject 1 was alert and oriented with a good airway and with bleeding to his upper left arm and upper left leg. Subject 1 told paramedics he had been running when he was shot Subject 1 appeared to have entrance and exit wounds to both extremities. Subject 1 also told paramedics he had been drinking and smoking and had just ate. Paramedics did not observe any other wounds on Subject 1 and transported him to Stroger Hospital. (Att. 35)

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<sup>28</sup> The Original Case Incident Report (Att. 42) documented Civilian 6 stated Subject 1 was his cousin while the Arrest Report (Att. 43) for Civilian 6 documented Civilian 6 stated Subject 1 was his "play cousin."

**Medical Records** from **Stroger Hospital** document that Subject 1 arrived at 2205 hours and was observed to have a two gunshot wounds to his left upper arm, a gunshot wound to his left medial thigh, and a gunshot wound to his left post thigh. Subject 1 told hospital personnel he used marijuana daily and drinks alcohol on the weekends. Subject 1's discharged diagnosis were gunshot wounds to his left arm and his left thigh and a "left humerus fx<sup>29</sup> s/p<sup>30</sup> ORIF<sup>31</sup>." (Att. 76)

#### **D. Office of Emergency Management and Communications (OEMC)**

**OEMC** transmissions documented on April 30, 2013, at approximately 9:13 p.m. hours, Beat XXX, Officer A, appeared to sound distressed while stating, "White t-shirt, male black....." A female officer, Sergeant 3, reported they were at "XXX Burley" and needed additional cars at the location and another unidentified male officer made the same request for additional officers. A few seconds later, Sergeant 3 reported shots fired. Subsequently, Beat XXX, Officer A, reported shots fired by the police. Officer A also called a "10-1," requested an ambulance to the scene, and continued to ask for assistance from more officers to come to the scene. Sergeant 3 reported a "chaos" and stated people were attempting to get the "guy" off the ground and other officers called a "10-1." Meanwhile, several people called 911 and reported hearing gunshots in the XXX South block of Burley Avenue. One of the callers reported a male had been shot and the police were "macing and tasing" people while another caller reported the police had "shot a man." Attempts were made to identify the 911 callers<sup>32</sup> who witnessed the incident; however, some of the 911 callers only heard gunshots and did not witness the shooting and other 911 callers did not cooperate with this investigation. (Att. 13, 49, 59, 60, 102)

#### **E. Forensic Evidence**

The **Evidence Technician Photographs** depicted the scene of the shooting from various angles and the recovered evidence. Photographs were also taken of Subject 1 at Stroger Hospital and of Officers A and B while at Chicago Police Department Area South. In addition, Forensic Investigators took photographs of a silver Samsung Cricket cell phone with what appeared to be dried blood on the cell phone<sup>33</sup>. (Att. 64-69)

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<sup>29</sup> A fracture of the bone in the upper arm.

<sup>30</sup> Status post.

<sup>31</sup> Open Reduction Internal Fixation.

<sup>32</sup> Approximately nine people called 911 and reported the incident.

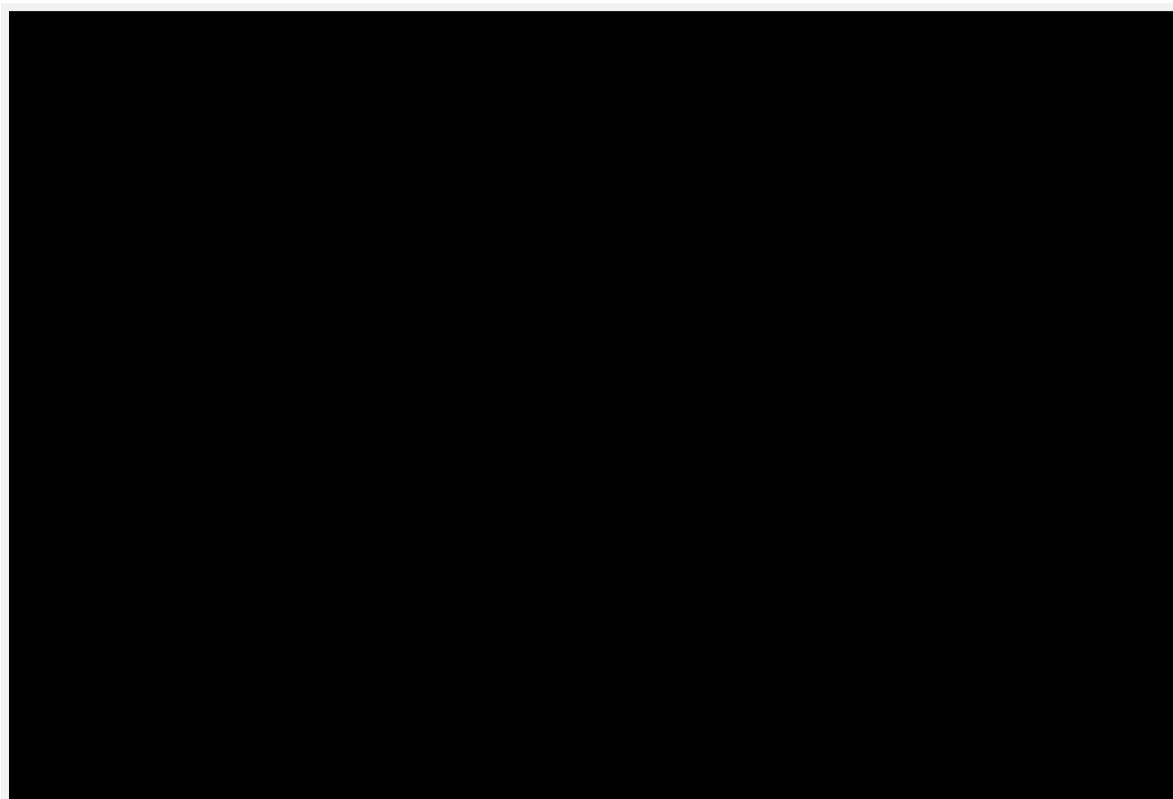
<sup>33</sup> The Samsung Cricket cell phone was recovered in Subject 1's hospital room by a CPD Detective, Inventory #XXX. The Samsung Cricket cell phone contained text messages, call list, and phone contacts.



*Pictures of recovered Samsung Cricket cell phone with what appeared to be blood on the cellphone.*

The **Crime Scene Processing Report** documented that there was no weapon recovered from Subject 1 on the scene. Forensic Investigators received a bloody Samsung Cricket cell phone, Inventory #XXX, from Detective 6 while at Chicago Police Department Area South. An iPhone, Inventory #XXX, was also recovered from Subject 1's front right pocket of his pants at Stroger Hospital.

In addition, five Win 9mm Luger + P fired cartridge cases were recovered at XXX S. Burley Avenue from the parking lot pavement, three Win 9mm Luger + P fired cartridge cases were recovered at XXX S. Burley Avenue, one Win 9mm Luger + P fired cartridge case was recovered at XXX S. Burley Avenue, and one Win 9mm Luger + P fired cartridge case was recovered at XXX S. Burley Avenue from the grass in the rear yard. All of the Win 9mm Luger + P fired cartridge cases were inventoried under number XXX.





= Where the Win 9mm Luger + P fired cartridge cases were recovered.

Officer A's firearm, a Glock 9mm model 17, semi-automatic pistol, with one Win 9mm Luger + P live cartridge in the chamber and eleven Win 9mm Luger + P live cartridges in the magazine, was inventoried under number XXX.

Officer B's firearm, Sig Sauer 9mm model P226, semi-automatic pistol, with one Win 9mm Luger + P live cartridge in the chamber and ten Win 9mm Luger + P live cartridges in the magazine, was inventoried under number XXX. (Att.14)

The **Illinois State Police (ISP) Report**, dated May 25, 2013, documented the testing of Officer B's firearm, a Sig Sauer 9mm model P226, semi-automatic pistol, bearing serial #XXX, and inventoried under number XXX. Officer B's firearm was found to be in functional condition. The testing of Officer A's firearm, a Glock 9mm model 17, semi-automatic pistol, bearing serial #XXX, and inventoried under number XXX, found Officer A's firearm to be in functional condition. The fired cartridge cases, inventoried under number XXX, were tested and revealed the five (5) fired cartridge cases recovered at XXX S. Burley Avenue from the parking lot pavement were fired from Officer B's firearm and the fired cartridge cases recovered at XXX S. Burley Avenue, XXX S. Burley Avenue, and XXX S. Burley Avenue (from the grass in the rear yard) were fired from Officer A's firearm. (Att. 77)

#### **F. Court Proceedings**

According to the **Transcripts from the Circuit Court of Cook County**, Case #XXX, on March 5, 2014, Officer 4 testified in a manner similar to the statement he gave to IPRA. Officer 4 recalled he observed Officer A withdraw his firearm and point the firearm in the direction of Subject 1 as he chased him, but he did not observe Officer A discharge his firearm. After hearing the initial gunshots, Officer 4 and Officer 5 followed in their unmarked vehicle behind Officer B's vehicle. When Officer 4 observed Subject 1 on the ground, Officers A and B were patting down Subject 1. Officer 4 observed Officers A and B perform a pat down around Subject 1's waistband, his front side, and his backside waistband. (Att. 155)

According to the **Transcripts from the Circuit Court of Cook County**, Case #XXX, on March 5, 2014, Officer A testified in a manner similar to the statement he gave to IPRA. Officer A recalled he did not see Subject 1 throw anything from the last time he saw the chrome object and fired his firearm until the time Officer B performed a pat down search. Officer A did not observe Subject 1 put the chrome object back inside his pants after he discharged his firearm at Subject 1, but explained that his vision was not fixated on Subject 1's hand. Upon inquiry, Officer A stated that Subject 1 never fired anything from the chrome object and he did not hear any noise, such as a clicking sound, coming from the chrome object. Officer A did not recall Subject 1 motioning as if he was pulling a trigger with the chrome object. (Att. 155)

According to the **Transcripts from the Circuit Court of Cook County**, Case #XXX, on March 5, 2014, Officer B testified in a manner similar with the statement he gave to IPRA. Officer B explained after he performed a pat down of Subject 1 he was not able to turn Subject 1 over or look underneath Subject 1 because he did not have time. Officer B recalled Officer A did not relay any information to him, such as Subject 1 having an object in his hand or that Subject 1 turned towards Officer A. (Att. 155)

According to the **Transcripts from the Circuit Court of Cook County**, Case #XXX, on March 5, 2014, Sergeant 7 testified Subject 1 told him the Samsung cell phone was his phone. Sergeant 7 could not remember specifically writing in a report that Subject 1 stated the Samsung cell phone belonged to him. Sergeant 7 did not know how the Samsung cell phone got into the biohazard bag separate from Subject 1's clothing. (Att. 155)

According to the **Transcripts from the Circuit Court of Cook County**, Case #XXX, on March 5, 2014, Detective 6 testified in a manner similar to the statement he gave to IPRA. Upon inquiry, Detective 6 stated he believed Sergeant 7 learned from hospital staff that the Samsung cell phone was recovered from Subject 1 at the hospital, but Detective 6 could not recall for sure. Detective 6 related he knew for certain the Samsung cell phone was with Subject 1's property. Detective 6 explained he does not know how the cell phone got with Subject 1's belongings and he took Sergeant 7's word as to where Sergeant 7 recovered the cell phone. According to Detective 6, the Samsung cell phone was never sent to the crime lab to see if there was actual blood on the cell phone and he never checked to see if the cell phone was registered to Subject 1 or anyone in Subject 1's family. Detective 6 further stated that once the Samsung cell phone was inventoried, "he never did anything with the cell phone again." Additionally, Detective 6 related his Detective Supplementary Report does not detail that Subject 1 admitted the Samsung cell phone belonged to him. (Att. 155)

According to the **Transcripts from the Circuit Court of Cook County**, Case #XXX, on March 5, 2014, Subject 1 testified the Samsung cell phone did not belong to him and he denied having any shiny object on him during the incident. Subject 1 stated that when the police pulled in the parking lot he was already in between two vehicles talking to people. Subject 1 denied bending down between two vehicles. Subject 1 stated that Officer A exited the vehicle as he (Subject 1) walked past the two vehicles he was standing in between. Subject 1 recalled he started to run because Officer A fired a shot in the air. After Subject 1 ran, Officer A discharged his firearm multiple times. Subject 1 denied having his right hand around his waistband or

turning towards Officer A with his hand raised. Subject 1 denied giving anything to anybody after he was shot and explained the officers did not allow anyone to get close to him. (Att.155)

**On March 5, 2014**, the Honorable Judge 10 found Subject 1 Not Guilty to all charges, including two counts of Aggravated Assault to a Peace Officer. (Att. 87, 155)

#### **G. Civil Suit**

**Civil Suit Subject 1 vs. City of Chicago**, XXX, documented that Subject 1 claimed he was shot from behind by Officers B and A without justification. Subject 1 stated he was unarmed and presented no threat to officers or anyone else, and was running away at the time. Officer A chased Subject 1 on foot and fired multiple series of shots at Subject 1. Officer B chased Subject 1 in an unmarked police vehicle, caught up with Subject 1 a few moments later, exited his squad car, and fired multiple series of shots at Subject 1. Subject 1 claimed at the time he was shot, he was running away from Officers A and B, had no weapon, did not reach into his waistband, and was not pointing anything, let alone a weapon, at Officers A and B. (Att. 87)

**In civil case #XXX, Accused Officer A** gave a deposition dated November 5, 2014, which provided similar details in his statement to IPRA. Officer A added that Officer 9 prepared Subject 1's Arrest Report and he believed Sergeant 3 prepared his TRR and OBR. Officer A clarified that Subject 1 was holding a clear cup of clear liquid when he first observed Subject 1. Officer A stated he observed people in the area drinking beer, but Subject 1 was stopped because his actions were suspicious in that Subject 1 was the only one to walk away from the crowd. Officer A recalled "he had his radio on the zone while Officer B's radio was on car-to-car."<sup>34</sup> However, Officer A could not recall if he said anything over the radio about Subject 1 having a weapon before he discharged his firearm. Officer A explained he believed. Subject 1 had a gun because he held a chrome shiny object like a handgun, but Officer A could not say if the gun was a revolver or semi-automatic. Officer A stated he did not observe Subject 1 throw anything away as he pursued him, but he did lose sight of Subject 1 briefly when Subject 1 fled behind the row homes. According to Officer A, he only discharged his firearm on two separate occasions during the incident (Att.158)

**In civil case #XXX, Accused Officer B** provided a deposition dated November 7, 2014, which provided similar details to those given in his statement to IPRA. Officer B stated that he did not see any item in Subject 1's hands. Officer B stated he told Sergeant 3 he did not find a gun on Subject 1. Officer B related that after the incident, specifically during the walkthrough, was the first time he had the opportunity to tell detectives or Deputy Chief 17 he did not have a chance to do a complete search of Subject 1. Officer B stated he did not observe a shiny object or a cell phone on Subject 1 at any time during the incident and that Subject 1 did not have anything in his hand. According to Officer B, he never feared battery to himself. (Att. 151)

**In civil case #XXX, Witness Officer 5** provided a deposition dated November 12, 2014, which provided similar details in his statement to IPRA. Officer 5 recalled that Officer 4 went

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<sup>34</sup> "Radio on the zone" allows officers to listen to dispatch calls and get updates on dispatched calls. Car-to car transmissions allows officers to speak via the radio without being heard by a dispatcher or over the radio. Radio transmissions are recorded, but car-to-car transmissions are not recorded.

over the radio, via car-to-car, and told Officer B that Subject 1 had walked away from the crowd and had picked up or dropped something in between two parked cars. After Subject 1 ran, Sergeant 3 followed Officer B in her vehicle, and Officer 5 followed Sergeant 3 in his vehicle. Officer 5 recalled there was a distance between his vehicle and Sergeant 3's vehicle. Officer 5 heard Officer A go over the radio and report shots fired by the police after the first set of gunshots and heard Officer A give a description of Subject 1. However, Officer 5 did not hear Officer A state Subject 1 had a weapon. When Officer 5 observed Subject 1 on the ground, there were approximately five or more people around Subject 1, and within seconds a larger crowd started to surround him and the officers. (Att.154)

**In civil case #XXX, Witness Sergeant 3** provided a deposition dated December 2, 2014, in which she provided similar details in her statement to IPRA. Sergeant 3 added she completed Officer A' and Officer B's TRR with their assistance. Sergeant 3 recalled she received information from the gang intelligence unit about the repass. After Subject 1 was shot and Officers B and A were around Subject 1, Sergeant 3 arrived and then Officers 4 and 5 arrived. When Officers 4 and 5 arrived, they attempted to keep the crowd back. Sergeant 3 stated mace was never used to control the crowd after the incident. According to Sergeant 3, Officer B never told her that he did not have an opportunity to do a complete search of Subject 1. (Att.156)

**In civil case #XXX, Sergeant 7** provided a deposition dated December 3, 2014, in which he stated that on the date of the incident Sergeant 18 assigned him to work on the officer involved shooting that had occurred with Officers A and B. Sergeant 7 's assignment was to go to Stroger Hospital and interview Subject 1. According to Sergeant 7 , he interviewed Subject 1 after reading him his Miranda Rights, spoke with hospital personnel about Subject 1's condition and what they intended to do to treat him, and recovered a cell phone that was in Subject 1's bag of clothing. Sergeant 7 explained Subject 1's clothing was in a plastic bag and inside the bag was another plastic bag, with a biohazard symbol, which contained the silver cell phone. Sergeant 7 asked Subject 1 if the silver cell phone belonged to him, and Subject 1 confirmed the cell phone belonged to him. Sergeant 7 called Detective 6 and informed him that he recovered a silver cell phone. Sergeant 7 recalled he took the bag containing the cell phone because Detective 6 wanted the cell phone brought back to Area South Detective Division. Sergeant 7 further recalled he took the bag containing the cell phone because he was concerned the officers guarding Subject 1 would get distracted or the cell phone would be moved around when Subject 1 went to surgery and he did not want the cell phone to be taken by someone. Sergeant 7 looked through Subject 1's clothing in order to get a general description of what Subject 1 was wearing, but he did not search Subject 1's pants pockets. Sergeant 7 stated that at Subject 1's criminal trial, he learned that a black iPhone was later found in Subject 1's pants pocket, but he never saw the iPhone as he looked through Subject 1's clothes. Sergeant 7 stated he did handle Subject 1's pants enough to know there was no weapon in Subject 1's clothing. (Att. 152)

**In civil case #XXX, Officer 9** provided a deposition dated December 15, 2014 in which he stated he was at the 4<sup>th</sup> District Station processing an arrestee when he heard a call of distress over the radio and shortly afterwards he heard a "10-1" over the radio. Officer 9 and his partner, Officer A1, got someone to watch their arrestee and went to the location of incident to assist. When Officer 9 arrived at the scene, he observed numerous officers trying to keep a crowd of people back. Subsequently, Officer 9 arrested Subject 1's brother, Civilian 5 . Officer 9 recalled

that Sergeant 3 told him to complete Subject 1's arrest report, so Officer 9 prepared and attested to Subject 1's arrest report. Officer 9 stated he spoke briefly to Officer A, Sergeant 3, and detectives to complete Subject 1's arrest report. (Att. 153)

**In civil case #XXX, Sergeant 18, #XXX, provided a deposition dated December 18, 2014, in which he stated he arrived at the scene of the officer involved shooting approximately one hour after the incident occurred. Sergeant 18 was assigned to Chicago Police Department Area South Detective Division during the incident and was Detective 6's supervisor. When Sergeant 18 arrived on the scene of the incident, Sergeant 18 spoke to Detective 6 who informed him what had occurred. Sergeant 18 stated he never talked to Officers A and B about the incident and to the best of his recollection he never talked to any witness about what occurred. (Att. 157)**

An **offer of judgment** for Civil Suit, XXX, documented that Subject 1 received \$350,000 plus reasonable attorney's fees and costs not to exceed \$150,000. (Att.160)

Approved:

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XXX #XXX  
COPA Supervising Investigator

## IV. ANALYSIS

### A. APPLICABLE RULES AND LAW:

#### 1. Chicago Police Department Rules of Conduct

Rule 6: Disobedience of any order or directive, whether written or oral.

Rule 10: Inattention to duty.

#### 2. Use of Deadly Force

Consistent with Illinois state law as codified at 720 ILCS 5/7-5, according to the Chicago Police Department's General Order 03-02-03, Section II, A:

A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or:
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
  - b. is attempting to escape by use of a deadly weapon or;
  - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.<sup>35</sup>

Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight"

<sup>35</sup> General 03-02-03(II)(A). This report references the version of General Order 03-02-03 in effect on 30 April 2013.

and “allow for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). The analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; *see also Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003). Nevertheless, the Supreme Court held in *Tennessee v. Garner*, 471 U.S. 1 (1985), and has since reiterated, that “it is unreasonable for an officer to ‘seize an unarmed, nondangerous suspect by shooting him dead.’” *Brosseau v. Haugen*, 543 U.S. 194, 197 (2004) (quoting *Garner*, 471 U.S. at 11).

### 3. Restraining Arrestees

The version of General Order 06-01-02 in effect on 30 April 2013 provided in relevant part: “Sworn members taking persons into custody or accepting custody from other officers will be responsible for conducting a thorough search and ensuring that the persons are appropriately restrained to prevent or injury.”<sup>36</sup> The purpose of this policy is to ensure that “[a] person taken into Department Custody will be restrained and transported in such a manner as to prevent escape and to provide for the safety of the public, the person in custody, and the officers involved.”<sup>37</sup>

### 4. Preponderance of Evidence Standard

The standard of proof in administrative cases investigated by COPA is a preponderance of the evidence. A preponderance of evidence can be described as evidence that makes it more likely than not that the alleged misconduct took place. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred than that it did not occur, even if by a narrow margin (i.e., at least a 51 percent likelihood that the facts supporting the occurrence of misconduct are true), then the standard of proof has been met.

## B. Analysis of the Allegations Against Officer A

### 1. Officer A unjustifiably used deadly force against Subject 1 in violation of Rule 6

The evidence demonstrates that Officer A discharged his firearm five times on April 30, 2013.<sup>38</sup> Officer A asserts that he discharged his firearm because Subject 1 put him in fear of his life by pointing a shiny, chrome object in his right hand at him on two separate occasions while fleeing.<sup>39</sup> However, as outlined below, COPA finds that Officer A’s actions were objectively

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<sup>36</sup> General Order 06-01-02(IV)(A).

<sup>37</sup> *Id.* (II).

<sup>38</sup> Att. 9.

<sup>39</sup> Att. 121 at 78-79.

unreasonable in light of the facts and circumstances confronting him and COPA finds that a reasonable officer would not have discharged his firearm at Subject 1 during the foot pursuit.

- a. It was unreasonable for Officer A to believe deadly force was necessary to prevent death or great bodily harm
  - i. Prior to arriving at the XXX, Officer A had no reason to believe that Subject 1 had committed or would commit a violent crime or that any criminal activity was occurring at the repass
  - ii. Officer A did not observe Subject 1 commit any crimes and did not have probable cause to believe Subject 1 had committed any crimes

Officer A first became aware of Subject 1 after Officer 4 radioed via car-to-car radio to stop Subject 1 who was holding plastic cup.<sup>42</sup> Officer A observed Subject 1 look around “frantically”, which Officer A interpreted as Subject 1 trying to make a quick exit.<sup>43</sup> Officer A also observed Subject 1 bend down between two parked cars and “mess with his waistband” in a manner consistent with someone trying to conceal something.<sup>44</sup> Officer B then ordered Subject 1 to stop and come over to the police vehicle. Officer A observed Subject 1 take a few steps towards his police vehicle before turning around, dropping his cup, grabbing his “waistband area,” and running away.<sup>45</sup>

While Officer A could have reasonably construed Subject 1’s behavior as sufficiently suspicious to conduct a limited *Terry* stop to investigate whether Subject 1 was involved in criminal activity, Officer A did not have probable cause to believe Subject 1 had committed any specific crime with the possible exception of resisting or obstructing a peace officer, 720 ILCS 5/31-1, which is merely a Class A misdemeanor.<sup>46</sup> Indeed, Officer A admitted that he initially

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<sup>40</sup>Att. 158 at 124.

<sup>41</sup> Att. 122 at 8, 10.

<sup>42</sup> *Id.* at 11.

<sup>43</sup> Att. at 11.

<sup>44</sup> *Id.* at 12, 27-28.

<sup>45</sup> *Id.* at 13, 29.

<sup>46</sup> Subject 1 was not convicted of this offense.

intended to stop Subject 1 simply to investigate whether the liquid in his plastic cup was alcohol.<sup>47</sup>

iii. Subject 1 did not possess a firearm<sup>48</sup>

Officer A repeatedly asserted that Subject 1 had a shiny chrome object in his right hand while fleeing, that Subject 1 held the object like a firearm and that he still believes the object in Subject 1's right hand on the night of April 30, 2013, was a firearm.<sup>49</sup> However, the evidence does not support Officer A' assertion that Subject 1 possessed a firearm on the night of April 30, 2013.

Subject 1 denied possessing a firearm and Subject 1's assertion is corroborated by the physical evidence and the testimony of the other officers.<sup>50</sup> Sergeant 3 and Officers Officer B, Officer 4 , and Officer 5 did not observe Subject 1 with any type of weapon or any bulge at or near his waistband at any point during the incident. Officer A did not observe Subject 1 drop or throw the shiny chrome object.<sup>51</sup> Officer B did not observe *any* object in Subject 1's hand during the chase, when he discharged his firearm or when he approached to handcuff him.<sup>52</sup> Furthermore, Officer B did not find any firearm in Subject 1's waistband despite performing a pat down.<sup>53</sup> It is not likely that Officer B would have completely missed a firearm even during a quick pat down.<sup>54</sup> Furthermore, the Department did not locate any firearm on the scene after Subject 1's arrest or among Subject 1's possessions at the hospital.<sup>55</sup> Finally, it is undisputed that Subject 1 did not discharge a firearm at Officer A or any individual.

Officer A and Officer B proposition that a member of the "angry crowd" may have taken the firearm from Subject 1 is mere conjecture. Subject 1's right hand was handcuffed by the time

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<sup>47</sup> Att. 158 at 132-34, 142.

<sup>48</sup> "Ordinarily, facts unknown to an officer prior to the shooting are prevented from being used to attack his credibility. Where the facts are controverted in a reasonable force case, impeachment by contradiction is allowed". *Common v. City of Chicago*, 661 F.3d 940, 946 (7th Cir. 2011). Furthermore, the "credibility of the witness can always be attacked by showing that his capacity to observe, remember or narrate is impaired." *Id.* (quotations and citation omitted). In the present case, Officer A' version of the events is controverted by physical evidence and other testimony and Officer A' ability to observe, remember, and narrate is under dispute. Therefore, the fact that Subject 1 was not armed, although unknown to Officer A at the time of the shooting, becomes relevant to assess the credibility of his statements.

<sup>49</sup> Att. 158 at 150-51.

<sup>50</sup> COPA would not rely on Subject 1's statement alone because COPA has concerns over his veracity. Specifically, Subject 1 testified in his criminal case that the Samsung Cricket cell phone did not belong to him, but the cell phone was recovered with his other belongings at the hospital strongly suggests it was his cellphone. COPA finds by a preponderance of evidence that the Samsung Cricket cell phone belonged to Subject 1 and was in Subject 1's possession during the shooting incident. Nonetheless, the physical, testimonial, and circumstantial evidence corroborates many other parts of Subject 1's statement to IPRA and as explained below, COPA finds material elements of Officer A' statements to be incredible and to be directly contradicted by physical, testimonial, and circumstantial evidence.

<sup>51</sup> Att. 158 at 197.

<sup>52</sup> Att. 122 at 33-39, 45-47; Att. 151 at 186.

<sup>53</sup> Att. 122 at 47, 62. It is not likely that Subject 1 would have been able to put a firearm anywhere else on his body besides his waistband while running away from Officer A at full speed.

<sup>54</sup> However, it is logical that Officer B would have missed or ignored the Samsung Cricket cell phone during the pat down because a cell phone does not feel like a firearm.

<sup>55</sup> Att. 15, 16, 47.

the crowd arrived and Officer B stated his left hand was “immobilized” due to the gunshot wound.<sup>56</sup> While a number of individuals approached Subject 1 before the officers secured the scene, none of the officers saw anyone take a firearm from Subject 1. Therefore, COPA finds by a preponderance of the evidence that Subject 1 did not possess a firearm.

iv. Officer A’ version of events is not credible

COPA need not merely accept Officer A’ account of the events at issue. *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9<sup>th</sup> Cir. 2014) (“[I]n the deadly force context, we cannot simply accept what may be a self-serving account by the police officer.”) (quoting *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994)). Rather, COPA must parse through all the evidence to assess the plausibility and reliability of the officer’s account. *Id.* (noting that a court reviewing a use of deadly force incident must examine all the evidence in the record “to determine whether the officer’s story is internally consistent and consistent with other known facts”). This includes circumstantial evidence that, if believed, would tend to discredit the police officer’s story. *Cruz*, 765 F.3d at 1079. COPA finds Officer A statements regarding the shooting incident are not credible and defy common-sense.

First, Officer A repeatedly stated during Subject 1’s criminal trial, his IPRA statements, and his deposition that he discharged his firearm at Subject 1 on *two* separate occasions in response to Subject 1 making threatening gestures at him on two separate occasions. However, Detective 6 wrote in his extremely detailed Case Supplementary Report that Officer A told him he discharged on *three* separate occasions: (1) three shots in the parking lot of XXX S. Burley building; (2) one shot as he approached the northwest corner of the XXX S. Burley building; and (3) one shot from behind the XXX S. Burley building. Detective 6 also told IPRA during his interview that Officer A informed him that he fired on three separate occasions and the location of Officer A’ shell casings also support that Officer A discharged his firearm from three separate locations.<sup>57</sup> Officer A never explained this major inconsistency.<sup>58</sup>

Second, it is extremely unlikely that Subject 1 pointed the Samsung Cricket cell phone or any other shiny chrome object at Officer A in the manner Officer A alleges.<sup>59</sup> Officer A stated Subject 1 grabbed his “waistband area” when he began to flee and that on two separate occasions Subject 1, while continuing to run away, turned his body to the right “at the waist,” turned his head to the right towards Officer A, and extended his right arm completely at a ninety degree angle while pointing a shiny chrome object in his right hand at Officer A as if it were a firearm. It is entirely unclear why Subject 1 would point a Samsung Cricket cell phone at an armed police officer while fleeing. COPA finds by a preponderance of evidence that Subject 1 did not make this gesture and even assuming Subject 1 made this gesture once, COPA finds that it is even less

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<sup>56</sup> Att. 122 at 47.

<sup>57</sup> Att. 14; Att. 93 at 6. COPA recognizes that shell casings may move around, but in the instant case the locations of the shell casings corroborate Detective 6’s Case Supplementary Report.

<sup>58</sup> COPA recognizes that Officer A could have reasonably been confused about the *number* of shots he discharged on the night of April 30 2013, but that is not the issue here. It is extremely unlikely that Detective 6 would write detailed information about three firing locations in his Case Supplementary Report unless Officer A told him he discharged his firearm from three separate locations.

<sup>59</sup> As explained above, COPA finds by a preponderance of the evidence that Subject 1 did not possess a firearm.

likely that Subject 1 subsequently made the exact same gesture again after Officer A discharged three shots at him.

Third, COPA finds that it is more likely than not that Subject 1 did not have a cell phone in his right hand at any point during the chase. Officer B stated that Subject 1's hands were empty when he approached to handcuff Subject 1 and did not find any items in Subject 1's waistband during his search.<sup>60</sup> Thus, Subject 1 would have had to put the Samsung Cricket cell phone back in his jeans' pocket while running away at full speed and under fire from Officer A.

Finally, Officer A's actions were inconsistent with the actions of an officer who believed a subject had brandished a firearm at him in a threatening fashion. Officer A did not call out over the radio that Subject 1 possessed a firearm despite conceding he received training to do exactly that at the police academy.<sup>61</sup> Even more troubling, after the shooting, Officer A did not communicate his belief that Subject 1 was armed with Officer B. Nor did Officer A take reasonable steps to try to locate the weapon, such as conducting a more thorough search of Subject 1 before allowing Subject 1 to go into the ambulance with only his right hand handcuffed.<sup>62</sup> Again, Officer A alleges that he reasonably discharged his firearm at Subject 1 five times based on his belief that Subject 1 had threatened him with a firearm, but then failed to subsequently take any actions to ensure the safety of his fellow officers, the paramedics, or the public at large. While COPA recognizes that Officer A faced a chaotic situation after the shooting, common-sense would suggest that finding the firearm that Subject 1 allegedly brandished would have been a top priority.

For the above reasons, COPA finds that Officer A did not have a reasonable basis to believe that Subject 1 threatened him with imminent death or great bodily harm. Therefore, Officer A was not permitted to use deadly force against Subject 1 under the first prong of General Order 03-02-03(II)(A).

- b. Officer A's use of deadly force was not permissible based on the circumstances under which Subject 1 was fleeing from Officer A

As stated in the second prong of the Chicago Police Department policy governing the use of deadly force, under certain circumstances, a law enforcement officer is permitted to use deadly force against a person who is attempting to defeat an arrest or escape if the officer reasonably believes that the person:

- a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
- b. is attempting to escape by use of a deadly weapon or;

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<sup>60</sup> Att. 122 at 33-39, 45-47; Att. 151 at 186.

<sup>61</sup> Att. 158 at 153-56. Officer A repeatedly stated that the situation happened "too quickly" to warn his fellow officers over the radio, but almost all situations involving a person with a gun are rapidly unfolding and chaotic; nonetheless officers are expected and required to communicate pertinent information to their colleagues.

<sup>62</sup> Att. 122 at 56.; Att. 126 at 29.

- c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

Under the circumstances here, subsection (a) of the policy does not apply. There is no evidence to suggest that Subject 1 had committed a forcible felony. Subject 1 was acquitted of aggravated assault on a peace officer at his criminal trial and as explained above, COPA finds that Subject 1 did not threaten the use of physical force likely to cause death or great bodily harm.

Subsection (b) and subsection (c) of the policy also do not apply. There is no evidence to suggest that Subject 1 was attempting to escape by use of a deadly weapon or would endanger human life or inflict great bodily harm unless arrested without delay. To the contrary, the evidence establishes that Subject 1 was unarmed when he was shot and was simply fleeing from Officer A. To the extent Officer A subjectively believed that Subject 1 threatened him with imminent death or great bodily harm, his belief was objectively unreasonable for the reasons explained above.

For the foregoing reasons, Officer A discharged his firearm at Subject 1 without justification in violation of Rule 6.

- 2. Officer A was inattentive to duty by failing to thoroughly search Subject 1 and recover a chrome object during his arrest in violation of Rule 10

The Arrest Report lists Officers A and B as the arresting officers of Subject 1 and there is no evidence that Officer A and Officer B transferred custody of Subject 1 to any other Department member prior to Subject 1 being transported from the scene via ambulance.<sup>63</sup> Therefore, Officers A and B were responsible for thoroughly searching Subject 1 before he was transported by ambulance from the scene pursuant to General Order 06-01-02. Officer A observed Officer B perform a “quick pat down” and admitted he knew that the pat down was not “thorough” or “complete.”<sup>64</sup> Officer A asserted that he did not have enough time to thoroughly search Subject 1 because he had to “engage the angry crowd.”<sup>65</sup> However, Officer A admitted that more officers arrived to the scene and that the officers were then able to gain more control over the crowd.<sup>66</sup> Officer A stated that only “CPD members and Chicago Fire Department members” were around Subject 1 after the ambulance arrived.<sup>67</sup> Officer A did not take any reasonable steps to ensure that Subject 1 was thoroughly searched after backup arrived such as conducting the search himself or asking another officer to search Subject 1 before the paramedics removed him from the scene with his left hand unrestrained.<sup>68</sup> Indeed, Officer A is the only officer who observed the chrome object and therefore the only officer who would have known to search for it.

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<sup>63</sup> Att. 7. Officer A also admitted he was the arresting officer. Att. 126 at 26.

<sup>64</sup> Att. 121 at 65-66.

<sup>65</sup> *Id.* at 68-69.

<sup>66</sup> Att. 126 at 25-26.

<sup>67</sup> *Id.*

<sup>68</sup> Att. 126 at 20-21. Officer A could not recall if he told Officer B about the chrome object. Att. 121 at 71. Officer B stated that Officer A never told him about the chrome object. Att. 122 at 56. COPA finds by a preponderance of evidence that Officer A never told Officer B about the chrome object.

Undoubtedly Officer A faced a stressful and difficult situation, but Officer A was still required to properly communicate with other officers and ensure that Subject 1 was properly searched for the safety of the officers, the paramedics, Subject 1, and the public at large. Officer A conceded that he was trained to perform a custodial search after every arrest and that he in fact performs a custodial search after every arrest but that he did not perform a custodial search in this case.<sup>69</sup> Officer A also admitted that he did not inform other officers that Subject 1 was not properly or thoroughly searched.<sup>70</sup> It is particularly troubling that Officer A failed to take reasonable steps to search Subject 1 when he asserts that he believed the chrome object Subject 1 allegedly pointed at him was a firearm and he did not know if the chrome object had been recovered.<sup>71</sup>

For these reasons, Officer A was inattentive to duty by failing to thoroughly search Subject 1 and recover a chrome object during his arrest in violation of Rule 10.

### **C. Analysis of the Allegations Against Officer B**

#### **1. Officer B unjustifiably used deadly force against Subject 1 in violation of Rule 6**

The evidence demonstrates that Officer B discharged his firearm five times on April 30, 2013.<sup>72</sup> Officer B asserts that he discharged his firearm because he believed Subject 1 was going to shoot Officer A.<sup>73</sup> However, as outlined below, COPA finds that Officer B's actions were objectively unreasonable in light of the facts and circumstances confronting him and COPA finds that a reasonable officer in his position would not have discharged his firearm at Subject 1.

- a. It was unreasonable for Officer B to believe deadly force was necessary to prevent death or great bodily harm to Officer Officer A
  - i. Prior to arriving at the XXX, Officer B had no reason to believe that Subject 1 had committed or would commit a violent crime or that any criminal activity was occurring at the repass

First, Officer B had no specific information from which to discern that Subject 1 had committed or would commit a violent crime prior arriving at the XXX. Officer B did not know Subject 1 and had no information about Subject 1 when he arrived at the repass on the night of April 30, 2013.<sup>74</sup> Furthermore, while Officer B stated the repass was for a gang member and he

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<sup>69</sup> Att. 126 at 26-29.

<sup>70</sup> *Id.* 126 at 21.

<sup>71</sup> *Id.* at 18-20.

<sup>72</sup> Att. 11.

<sup>73</sup> Att. 122 at 61.

<sup>74</sup> Att. 122 at 8-10, 63-64.

was aware of gang activity from the South C Black Stones gang occurring at or near the XXX, Officer B did not have any specific information—such as calls to OEMC or information from an informant—from which to discern that criminal activity had occurred or was about to occur at the repass.<sup>75</sup>

- ii. Officer B did not observe Subject 1 commit any crimes and did not have probable cause to believe Subject 1 had committed any crimes

Officer B first became aware of Subject 1 after Officer 4 radioed via car-to-car to stop the individual, Subject 1, who was acting suspiciously and holding plastic cup.<sup>76</sup> Officer B believed the plastic cup may have contained alcohol which he stated is not allowed on “state supported land.”<sup>77</sup> Officer B observed Subject 1 bend down between two parked cars in a manner consistent with someone trying to conceal something like a weapon or narcotics.<sup>78</sup> However, Officer B also noted that Subject 1 could have just been “tyin’ his shoe.”<sup>79</sup> Officer B then ordered Subject 1 to stop and come over to his police vehicle. Officer B observed Subject 1 take a few steps towards his police vehicle before turning around, grabbing his waist, and running away.<sup>80</sup> Officer B testified in his deposition that Subject 1 did not have signs (e.g. clothing, tattoos, hats, etc.) of being associated with the South C Black Stones and he had no reason to believe Subject 1 was a member of a gang.<sup>81</sup>

While Officer B could have reasonably construed Subject 1’s behavior as sufficiently suspicious to conduct a limited *Terry* stop, he did not have probable cause to believe Subject 1 had committed any specific crime with the possible exception of resisting or obstructing a peace officer, 720 ILCS 5/31-1, which is merely a Class A misdemeanor.<sup>82</sup>

- iii. Officer B’s assumptions were unreasonable and Officer B did not have a sufficient basis to believe Subject 1’s gesture placed Officer A in imminent risk of death or great bodily harm

Officer B heard Officer A’ gunshots, but stated that he *assumed* the gunshots came from Subject 1 firing at Officer A.<sup>83</sup> Officer B further stated he was “barricaded behind the door” of his police vehicle when he observed Subject 1 appear from behind the row of houses.<sup>84</sup> Officer B stated that he could see Subject 1’s head turn to the right to look behind him and that he believed Subject 1’s elbow and arm were going up and starting to extend back.<sup>85</sup> Officer B stated that he

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<sup>75</sup> *Id.* at 8-10.

<sup>76</sup> Att. 122 at 23.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 28.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 29-31

<sup>81</sup> Att. 151 at 183-84. However, Officer B was suspicious that other people in the crowd were members of a gang.

<sup>82</sup> Subject 1 was not convicted of this offense.

<sup>83</sup> Att. 122 at 40-41.

<sup>84</sup> *Id.* at 42.

<sup>85</sup> *Id.* at 43-44, 59.

interpreted Subject 1's movement as "him possibly liftin up a weapon" and believed Subject 1 threatened Officer A's safety based on his *assumption* that Officer A was directly behind Subject 1.<sup>86</sup> Officer B stated that Subject 1 did not make any threatening gestures at him and that Subject 1 did not assault him.<sup>87</sup>

COPA finds Officer B's assumptions were an unreasonable basis to justify the use of deadly force against Subject 1. First, Officer Subject 1 conceded that he did not see Subject 1 discharging a firearm or holding any object besides a plastic cup.<sup>88</sup> Second, Officer B admitted that he could not even clearly see Subject 1's hand at the time Subject 1 made the allegedly threatening gesture because it was too dark.<sup>89</sup> Most importantly, Officer B admitted that he did not even know Officer A whereabouts at the moment Subject 1 made the allegedly threatening gesture and therefore could not have known whether Subject 1's gesture actually threatened Officer A with imminent death or great bodily harm.<sup>90</sup> Particularly, in light of the fact that Officer B had no prior information regarding Subject 1 or violent crimes occurring at the XXX that evening, did not have probable cause to believe Subject 1 had committed any crimes, and Subject 1 posed no imminent risk to Officer B, it was unreasonable for Officer B to use deadly force against Subject 1 based on such limited information.

- b. Officer B's use of deadly force was not permissible based on the circumstances under which Subject 1 was fleeing

As stated in the second prong of the Chicago Police Department policy governing the use of deadly force, under certain circumstances, a law enforcement officer is permitted to use deadly force against a person who is attempting to defeat an arrest or escape if the officer reasonably believes that the person:

- a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
- b. is attempting to escape by use of a deadly weapon or;
- c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

Under the circumstances here, subsection (a) of the policy does not apply. There is no evidence to suggest that Subject 1 had committed a forcible felony. Subject 1 was acquitted of aggravated assault on a peace officer at his criminal trial and as explained above, COPA finds that Subject 1 did not threaten the use of physical force likely to cause death or great bodily harm against Officer A, Officer B, or any other person.

Subsection (b) and subsection (c) of the policy also do not apply. There is no evidence to suggest that Subject 1 was attempting to escape by use of a deadly weapon or would endanger

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<sup>86</sup> *Id.*

<sup>87</sup> Att. 151 at 212, 249.

<sup>88</sup> *Id.* at 186; Att. 122 at 33-39, 45, 57.

<sup>89</sup> Att. 122 at 63.

<sup>90</sup> *Id.* at 60.

human life or inflict great bodily harm unless arrested without delay. As explained above, it was unreasonable for Officer B to assume Subject 1 was attempting to escape by a use of a deadly weapon or believe Subject 1 would endanger life or inflict great bodily harm unless arrested without delay based on the limited information available to him.

For the foregoing reasons, Officer B discharged his firearm at Subject 1 without justification in violation of Rule 6.

2. Officer B was inattentive to duty by failing to thoroughly search Mr. Subject 1 during his arrest in violation of Rule 10

Initially, Officer B acted reasonably in conducting a limited pat down and only handcuffing Subject 1's right hand given Subject 1's injuries and the approaching crowd. General 06-01-02 in fact cautions that "[o]fficers conducting subsequent required custodial searches during multiple-arrest situations are cautioned that the preliminary search may, due to urgent circumstances, have been limited or not fully effective."<sup>91</sup>

However, the Arrest Report lists Officer A and Officer B as the arresting officers of Subject 1 and there is no evidence that Officer A and Officer B transferred custody of Subject 1 to any other Department member prior to Subject 1 being transported from the scene by ambulance. Therefore, Officer B was responsible for taking reasonable steps to ensure that Subject 1 was thoroughly searched after backup arrived such as conducting the search himself or asking another officer to search Subject 1. Officer B conceded that he was trained to perform a custodial search after every arrest and that he in fact performs a custodial search after every arrest but that he did not perform a custodial search in this case.<sup>92</sup> Officer B also admitted that he did not inform other officers that Subject 1 was not properly or thoroughly searched.<sup>93</sup> Officer B's failure to take reasonable steps to ensure Subject 1 was searched is particularly troubling when Officer B *still* believed Subject 1 possessed a weapon after the pat down and had just used deadly force against Subject 1.<sup>94</sup> Officer B's explanation that he did not have enough time to search Subject 1 and that he was told to sit in a police vehicle alone once the crowd was controlled does not withstand scrutiny.<sup>95</sup> Backup arrived before Subject 1 was transported from the scene and Officer B could have properly communicated the limited nature of his initial pat down to Sergeant 3 or another officer at the scene and asked them to take custody of Subject 1 and conduct a more thorough search.

For these reasons, Officer B was inattentive to duty by failing to thoroughly search Subject 1 during his arrest in violation of Rule 10.

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<sup>91</sup> General Order 06-01-02(IV)(A).

<sup>92</sup> Att. 127 at 19-20.

<sup>93</sup> Att. 127 at 21.

<sup>94</sup> Att. 122 at 61. In his second interview with IPRA, Officer B elaborated that he also believed it was possible the gun could have been dropped or thrown somewhere else in the area. Att. 127 at 17-18.

<sup>95</sup> Att. 127 at 19-21, 29.

## V. CONCLUSION

After careful examination of the evidence and thorough analysis of the applicable law, COPA recommends the following findings:

### A. Officer A

1. Disobeyed the Chicago Police Department's Use of Force policy by using deadly force, firing his gun, against Subject 1 without justification, in violation of Rule 6 is **SUSTAINED**; and
2. Was inattentive to duty by failing to thoroughly search Subject 1 and recover a chrome object during his arrest, in violation of Rule 10 is **SUSTAINED**.

### B. Officer B

1. Disobeyed the Chicago Police Department's Use of Force policy by using deadly force, firing his gun, against Subject 1 without justification, in violation of Rule 6 is **SUSTAINED**; and
2. Was inattentive to duty by failing to thoroughly search Subject 1 during his arrest, in violation of Rule 10 is **SUSTAINED**.

Approved:

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Deputy Chief Administrator